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AZ CORP COMMISSION
 DOCKET CONTROL Arizona Corporation Commission

DOCKETED

APR 15 2016

BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED BY

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In the matter of:

FRANKLIN AAA HOLDINGS, LLC,
 a Texas limited liability company,

and

ANTHONY CLAVIEN, a single man,

Respondents.

DOCKET NO. S-20930A-15-0211

**ANSWER OF RESPONDENT
 ANTHONY CLAVIEN**

For his Answer to the Arizona Corporation Commission's ("ACC") Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties, and Order for Other Affirmative Action (the "Notice"), Respondent Anthony Clavien denies all allegations of the Notice unless expressly admitted herein, and further admits, denies, and alleges as follows:

1. Respondent denies the allegations set forth in paragraph 1 of the Notice.
2. In response to the allegations set forth in paragraph 2, Respondent admits that he resided in Arizona from time to time between November of 2009 and 2012.
3. In response to the allegations set forth in paragraph 3, Respondent admits that Franklin AAA Holdings, LLC ("FAH") is a Texas limited liability company, but denies that FAH maintains a place of business or mailing address in Scottsdale, Arizona.
4. In response to allegations set forth in paragraph 4, Respondent admits that the Certificate of Formation for FAH lists him as the organizer and as a member of FAH.

1 Respondent is without knowledge or information sufficient to form a belief as to the truth
2 of the remaining allegations set forth in paragraph 4.

3 5. In response to allegations set forth in paragraph 5, Respondent admits that
4 the Application for Certificate of Authority for Foreign Limited Liability Company that
5 was filed by FAH with the Georgia Secretary of State's Office in November of 2008 lists
6 him as a manager of FAH, and provides an Arizona address. Respondent is without
7 knowledge or information sufficient to form a belief as to the truth of the remaining
8 allegations set forth in paragraph 5.

9 6. In response to allegations set forth in paragraph 6, Respondent admits that
10 he is a respondent in this action.

11 7. Respondent denies the allegations set forth in paragraph 7.

12 8. Respondent has not been provided with copies of the FAH documents
13 described in paragraph 8 and therefore is without knowledge or information sufficient to
14 form a belief as to the truth of the allegations set forth in paragraph 8.

15 9. Respondent has not been provided with copies of the FAH documents
16 described in paragraph 8 and does not know the identity of the "investors" anonymously
17 described in paragraphs 8 and 9 and therefore is without knowledge or information
18 sufficient to form a belief as to the truth of the allegations set forth in paragraph 9.

19 10. Respondent denies the allegations set forth in paragraph 10.

20 11. The Notice does not identify the person anonymously described in
21 paragraph 11 and Respondent is therefore without knowledge or information sufficient to
22 form a belief as to the truth of the allegations set forth in paragraph 11.

23 12. The Notice does not identify the person anonymously described in
24 paragraph 12 and Respondent is therefore without knowledge or information sufficient to
25 form a belief as to the truth of the allegations set forth in paragraph 12.

26 13. The Notice does not identify the person anonymously described in
27 paragraph 13 and Respondent has not been provided with a copy of the documents
28 described in paragraph 13, and Respondent is therefore without knowledge or

1 information sufficient to form a belief as to the truth of the allegations set forth in
2 paragraph 13.

3 14. The Notice does not identify the person anonymously described in
4 paragraphs 14 and 15 and Respondent is therefore without knowledge or information
5 sufficient to form a belief as to the truth of the allegations set forth in paragraphs 14 and
6 15.

7 15. The Notice does not identify the person anonymously described in
8 paragraph 16 and Respondent has not been provided with the document described in
9 paragraph 16, and Respondent is therefore without knowledge or information sufficient to
10 form a belief as to the truth of the allegations set forth in paragraph 16.

11 16. Respondent is without knowledge or information sufficient to form a belief
12 as to the truth of the allegations set forth in paragraphs 17, 18 or 19.

13 17. The Notice does not identify the person anonymously described in
14 paragraph 20 and Respondent is therefore without knowledge or information sufficient to
15 form a belief as to the truth of the allegations set forth in paragraph 20.

16 18. The Notice does not identify the person anonymously described in
17 paragraphs 21 or 22 and Respondent has not been provided with the documents described
18 in paragraphs 21 and 22, and Respondent is therefore without knowledge or information
19 sufficient to form a belief as to the truth of the allegations set forth in paragraphs 21, 22
20 and 23.

21 19. Respondent denies the allegations set forth in paragraphs 24, 25, 26, 27 and
22 28.

23 **AFFIRMATIVE DEFENSES**

24 The following affirmative defenses nullify any potential claims asserted by the
25 ACC. Respondents reserve the right to amend this Answer upon the completion of
26 discovery and receipt of further information and disclosures from the ACC.

27 1. The Notice fails to state a claim upon which relief can be granted.
28

1 2. The ACC has not demonstrated the elements or met the applicable
2 standards to obtain any of the relief it seeks.

3 3. Respondents did not offer or sell securities within the meaning of the
4 Arizona Securities Act.

5 4. Respondents did not engage in activity that required registration with the
6 ACC's Securities Division.

7 5. If the transactions at issue are determined to be securities, they were exempt
8 from registration and/or sold in an exempt transaction.

9 6. Respondents did not act with the requisite scienter.

10 7. The alleged investors suffered no injuries or damages as a result of
11 Respondents' alleged conduct, acts or omissions.

12 8. The alleged investors alleged injuries or damages that are the result of act
13 or omissions committed by other defendants or by non-parties.

14 9. Restitution is not an appropriate remedy.

15 10. If restitution or rescission were ordered, the ACC should, in its discretion,
16 reduce the amount, if any, Respondent is ordered to pay.

17 11. Respondent did not violate A.R.S. §§ 44-1841 or -1842.

18 12. The ACC's claims are barred by all applicable statutes of limitations.

19 13. The ACC's claims are barred by prosecutorial delay.

20 14. The ACC's claims are barred by the doctrines of waiver, estoppel and
21 laches.

22 15. The ACC's claims are barred as being vague, ambiguous or overbroad.

23 16. Respondent is not jointly or severally liable with FAH.

24 17. This proceeding before the ACC denies Respondent essential due process
25 and is lacking in fundamental fairness. Respondent's constitutional rights will be further
26 denied if he is not afforded a trial by jury in this matter.

27 18. The ACC must comply with Rule 26.1 of the Arizona Rules of Civil
28 Procedure and provide disclosures to Respondent in accordance with that Rule.

19. Respondent alleges such other affirmative defenses in Ariz. R. Civ. P. 8(c) as may be determined to be applicable after disclosures from the ACC and discovery.

DATED this 15 day of April, 2016.

COPPERSMITH BROCKELMAN PLC

By

John C. Kelly

Attorneys for Respondent Anthony Clavien

ORIGINAL and 13 copies filed on
this 15th day of April, 2016, with:

Arizona Corporation Commission
Docket Control Center
1200 W. Washington
Phoenix, AZ 85007

COPIES of the foregoing served via United States Mail
this 15th day of April, 2016, to:

Ryan J. Millicam, Esq.
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Georgina S. Hadley